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21 UNITED STATES DISTRICT COURT  
22 CENTRAL DISTRICT OF CALIFORNIA

23 ALAN T. RASOF,  
24 Plaintiff,

25 v.

26 FELIX LYUBOVNY,  
27 Defendant.

Case No. 2:22-cv-08080-JVS-PD

Hon. Patricia Donahue

AMENDED STIPULATED  
PROTECTIVE ORDER

1       1.     A. PURPOSES AND LIMITATIONS

2           Discovery in this action is likely to involve production of confidential,  
3       proprietary, or private information for which special protection from public  
4       disclosure and from use for any purpose other than prosecuting this litigation may be  
5       warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter  
6       the following Stipulated Protective Order. The parties acknowledge that this Order  
7       does not confer blanket protections on all disclosures or responses to discovery and  
8       that the protection it affords from public disclosure and use extends only to the  
9       limited information or items that are entitled to confidential treatment under the  
10      applicable legal principles.

11           B. GOOD CAUSE STATEMENT

12           This action is likely to involve trade secrets, customer and pricing lists and  
13      other valuable research, development, commercial, financial, technical and/or  
14      proprietary information for which special protection from public disclosure and from  
15      use for any purpose other than prosecution of this action is warranted. Such  
16      confidential and proprietary materials and information consist of, among other  
17      things, confidential business or financial information, information regarding  
18      confidential business practices, or other confidential research, development, or  
19      commercial information (including information implicating privacy rights of third  
20      parties), information otherwise generally unavailable to the public, or which may be  
21      privileged or otherwise protected from disclosure under state or federal statutes,  
22      court rules, case decisions, or common law. Accordingly, to expedite the flow of  
23      information, to facilitate the prompt resolution of disputes over confidentiality of  
24      discovery materials, to adequately protect information the parties are entitled to keep  
25      confidential, to ensure that the parties are permitted reasonable necessary uses of  
26      such material in preparation for and in the conduct of trial, to address their handling  
27      at the end of the litigation, and serve the ends of justice, a protective order for such

1 information is justified in this matter. It is the intent of the parties that information  
2 will not be designated as confidential for tactical reasons and that nothing be so  
3 designated without a good faith belief that it has been maintained in a confidential,  
4 non-public manner, and there is good cause why it should not be part of the public  
5 record of this case.

### 6 7 8 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

9 The parties further acknowledge, as set forth in Section 12.3, below, that this  
10 Stipulated Protective Order does not entitle them to file confidential information  
11 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and  
12 the standards that will be applied when a party seeks permission from the court to  
13 file material under seal.

14 There is a strong presumption that the public has a right of access to judicial  
15 proceedings and records in civil cases. In connection with non-dispositive motions,  
16 good cause must be shown to support a filing under seal. See Kamakana v. City and  
17 County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v. Gen. Motors  
18 Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v. Sony Electronics,  
19 Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require  
20 good cause showing), and a specific showing of good cause or compelling reasons  
21 with proper evidentiary support and legal justification, must be made with respect to  
22 Protected Material that a party seeks to file under seal. The parties' mere designation  
23 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the  
24 submission of competent evidence by declaration, establishing that the material  
25 sought to be filed under seal qualifies as confidential, privileged, or otherwise  
26 protectable—constitute good cause.

27 Further, if a party requests sealing related to a dispositive motion or trial, then  
28 compelling reasons, not only good cause, for the sealing must be shown, and the

1 relief sought shall be narrowly tailored to serve the specific interest to be protected.  
 2 See Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-79 (9th Cir. 2010). For each  
 3 item or type of information, document, or thing sought to be filed or introduced under  
 4 seal in connection with a dispositive motion or trial, the party seeking protection  
 5 must articulate compelling reasons, supported by specific facts and legal  
 6 justification, for the requested sealing order. Again, competent evidence supporting  
 7 the application to file documents under seal must be provided by declaration.

8 Any document that is not confidential, privileged, or otherwise protectable in  
 9 its entirety will not be filed under seal if the confidential portions can be redacted. If  
 10 documents can be redacted, then a redacted version for public viewing, omitting only  
 11 the confidential, privileged, or otherwise protectable portions of the document, shall  
 12 be filed. Any application that seeks to file documents under seal in their entirety  
 13 should include an explanation of why redaction is not feasible.

## 14 2. DEFINITIONS

15 2.1 Action: this pending federal law suit

16 2.2 Challenging Party: a Party or Non-Party that challenges  
 17 the designation of information or items under this Order.

18 2.3 "CONFIDENTIAL" Information or Items: information (regardless of  
 19 how it is generated, stored or maintained) or tangible things that qualify for  
 20 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the  
 21 Good Cause Statement.

22 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
 23 their support staff).

24 2.5 Designating Party: a Party or Non-Party that designates information or  
 25 items that it produces in disclosures or in responses to discovery as  
 26 "CONFIDENTIAL."  
 27

28 2.6 Disclosure or Discovery Material: all items or information, regardless

1 of the medium or manner in which it is generated, stored, or maintained (including,  
2 among other things, testimony, transcripts, and tangible things), that are produced or  
3 generated in disclosures or responses to discovery in this matter.

4 2.7 Expert: a person with specialized knowledge or experience in a matter  
5 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
6 an expert witness or as a consultant in this Action.

7 2.8 House Counsel: attorneys who are employees of a party to this Action.  
8 House Counsel does not include Outside Counsel of Record or any other outside  
9 counsel.

10 2.9 Non-Party: any natural person, partnership, corporation, association, or  
11 other legal entity not named as a Party to this action.

12 2.10 Outside Counsel of Record: attorneys who are not employees of a party  
13 to this Action but are retained to represent or advise a party to this Action and have  
14 appeared in this Action on behalf of that party or are affiliated with a law firm which  
15 has appeared on behalf of that party, and includes support staff.

16 2.11 Party: any party to this Action, including all of its officers, directors,  
17 employees, consultants, retained experts, and Outside Counsel of Record (and their  
18 support staffs).

19 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
20 Discovery Material in this Action.

21 2.13 Professional Vendors: persons or entities that provide litigation  
22 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
23 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
24 and their employees and subcontractors.

25 2.14 Protected Material: any Disclosure or Discovery Material that is  
26 designated as "CONFIDENTIAL."

27 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
28 from a Producing Party.

1           3.     SCOPE

2           The protections conferred by this Stipulation and Order cover not only  
3 Protected Material (as defined above), but also (1) any information copied or  
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
5 compilations of Protected Material; and (3) any testimony, conversations, or  
6 presentations by Parties or their Counsel that might reveal Protected Material.  
7

8           Any use of Protected Material at trial shall be governed by the orders of the  
9 trial judge. This Order does not govern the use of Protected Material at trial.  
10

11           4.     DURATION

12           FINAL DISPOSITION of the action is defined as the conclusion of any  
13 appellate proceedings, or, if no appeal is taken, when the time for filing of an appeal  
14 has run. Except as set forth below, the terms of this protective order apply through  
15 FINAL DISPOSITION of the action. The parties may stipulate that they will be  
16 contractually bound by the terms of this agreement beyond FINAL DISPOSITION,  
17 but will have to file a separate action for enforcement of the agreement once all  
18 proceedings in this case are complete.

19           Once a case proceeds to trial, information that was designated as  
20 CONFIDENTIAL or maintained pursuant to this protective order used or introduced  
21 as an exhibit at trial becomes public and will be presumptively available to all  
22 members of the public, including the press, unless compelling reasons supported by  
23 specific factual findings to proceed otherwise are made to the trial judge in advance  
24 of the trial. See Kamakana, 447 F.3d at 1180-81 (distinguishing “good cause”  
25 showing for sealing documents produced in discovery from “compelling reasons”  
26 standard when merits-related documents are part of court record). Accordingly, for  
27 such materials, the terms of this protective order do not extend beyond the  
28 commencement of the trial.

1           5.     DESIGNATING PROTECTED MATERIAL

2  
3           5.1   Exercise of Restraint and Care in Designating Material for Protection.

4     Each Party or Non-Party that designates information or items for protection under  
5     this Order must take care to limit any such designation to specific material that  
6     qualifies under the appropriate standards. The Designating Party must designate for  
7     protection only those parts of material, documents, items, or oral or written  
8     communications that qualify so that other portions of the material, documents, items,  
9     or communications for which protection is not warranted are not swept unjustifiably  
10    within the ambit of this Order.

11         Mass, indiscriminate, or routinized designations are prohibited. Designations  
12     that are shown to be clearly unjustified or that have been made for an improper  
13     purpose (e.g., to unnecessarily encumber the case development process or to impose  
14     unnecessary expenses and burdens on other parties) may expose the Designating  
15     Party to sanctions.

16         If it comes to a Designating Party's attention that information or items that it  
17     designated for protection do not qualify for protection, that Designating Party must  
18     promptly notify all other Parties that it is withdrawing the inapplicable designation.

19         5.2   Manner and Timing of Designations. Except as otherwise provided in  
20     this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
21     stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
22     under this Order must be clearly so designated before the material is disclosed or  
23     produced.

24         Designation in conformity with this Order requires:

25         (a) for information in documentary form (e.g., paper or electronic  
26     documents, but excluding transcripts of depositions or other pretrial or trial  
27     proceedings), that the Producing Party affix at a minimum, the legend  
28     "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that



1 contains protected material. If only a portion or portions of the material on a page  
2 qualifies for protection, the Producing Party also must clearly identify the protected  
3 portion(s) (e.g., by making appropriate markings in the margins).

4 A Party or Non-Party that makes original documents available for inspection  
5 need not designate them for protection until after the inspecting Party has indicated  
6 which documents it would like copied and produced. During the inspection and  
7 before the designation, all of the material made available for inspection shall be  
8 deemed "CONFIDENTIAL." After the inspecting Party has identified the  
9 documents it wants copied and produced, the Producing Party must determine which  
10 documents, or portions thereof, qualify for protection under this Order. Then, before  
11 producing the specified documents, the Producing Party must affix the  
12 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a  
13 portion or portions of the material on a page qualifies for protection, the Producing  
14 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
15 markings in the margins).

16 (b) for testimony given in depositions that the Designating Party identify  
17 the Disclosure or Discovery Material on the record, before the close of the deposition  
18 all protected testimony.

19 (c) for information produced in some form other than documentary and for  
20 any other tangible items, that the Producing Party affix in a prominent place on the  
21 exterior of the container or containers in which the information is stored the legend  
22 "CONFIDENTIAL." If only a portion or portions of the information warrants  
23 protection, the Producing Party, to the extent practicable, shall identify the protected  
24 portion(s).

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
26 failure to designate qualified information or items does not, standing alone, waive  
27 the Designating Party's right to secure protection under this Order for such material.  
28 Upon timely correction of a designation, the Receiving Party must make reasonable



1 efforts to assure that the material is treated in accordance with the provisions of this  
2 Order.

3  
4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
6 designation of confidentiality at any time that is consistent with the Court's  
7 Scheduling Order.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
9 resolution process under Local Rule 37.1 et seq.

10 6.3 The burden of persuasion in any such challenge proceeding shall be on  
11 the Designating Party. Frivolous challenges, and those made for an improper purpose  
12 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
13 expose the Challenging Party to sanctions. Unless the Designating Party has waived  
14 or withdrawn the confidentiality designation, all parties shall continue to afford the  
15 material in question the level of protection to which it is entitled under the Producing  
16 Party's designation until the Court rules on the challenge.

17  
18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
20 disclosed or produced by another Party or by a Non-Party in connection with this  
21 Action only for prosecuting, defending, or attempting to settle this Action. Such  
22 Protected Material may be disclosed only to the categories of persons and under the  
23 conditions described in this Order. When the Action has been terminated, a  
24 Receiving Party must comply with the provisions of section 13 below (FINAL  
25 DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a  
27 location and in a secure manner that ensures that access is limited to the persons  
28 authorized under this Order.

1           7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
2 otherwise ordered by the court or permitted in writing by the Designating Party, a  
3 Receiving Party may disclose any information or item designated  
4 “CONFIDENTIAL” only to:

5           (a) the Receiving Party’s Outside Counsel of Record in this Action, as well  
6 as employees of said Outside Counsel of Record to whom it is reasonably necessary  
7 to disclose the information for this Action;

8           (b) the officers, directors, and employees (including House Counsel) of the  
9 Receiving Party to whom disclosure is reasonably necessary for this Action;

10           (c) Experts (as defined in this Order) of the Receiving Party to whom  
11 disclosure is reasonably necessary for this Action and who have signed the  
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13           (d) the court and its personnel;

14           (e) court reporters and their staff;

15           (f) professional jury or trial consultants, mock jurors, and Professional  
16 Vendors to whom disclosure is reasonably necessary for this Action and who have  
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18           (g) the author or recipient of a document containing the information or a  
19 custodian or other person who otherwise possessed or knew the information;

20           (h) during their depositions, witnesses ,and attorneys for witnesses, in the  
21 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
22 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will  
23 not be permitted to keep any confidential information unless they sign the  
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
25 agreed by the Designating Party or ordered by the court. Pages of transcribed  
26 deposition testimony or exhibits to depositions that reveal Protected Material may  
27 be separately bound by the court reporter and may not be disclosed to anyone except  
28 as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a

1 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information  
 2 produced by Non-Parties in connection with this litigation is protected by the  
 3 remedies and relief provided by this Order. Nothing in these provisions should be  
 4 construed as prohibiting a Non-Party from seeking additional protections.

5 (b) In the event that a Party is required, by a valid discovery request, to  
 6 produce a Non-Party’s confidential information in its possession, and the Party is  
 7 subject to an agreement with the Non-Party not to produce the Non-Party’s  
 8 confidential information, then the Party shall:

9 (1) promptly notify in writing the Requesting Party and the Non-Party  
 10 that some or all of the information requested is subject to a confidentiality agreement  
 11 with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the Stipulated  
 13 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
 14 specific description of the information requested; and

15 (3) make the information requested available for inspection by the  
 16 Non-Party, if requested.

17 (c) If the Non-Party fails to seek a protective order from this court within  
 18 14 days of receiving the notice and accompanying information, the Receiving Party  
 19 may produce the Non-Party’s confidential information responsive to the discovery  
 20 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
 21 not produce any information in its possession or control that is subject to the  
 22 confidentiality agreement with the Non-Party before a determination by the court.  
 23 Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
 24 of seeking protection in this court of its Protected Material.

## 25 26 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
 28 Protected Material to any person or in any circumstance not authorized under this

1 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
 2 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
 3 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
 4 persons to whom unauthorized disclosures were made of all the terms of this Order,  
 5 and (d) request such person or persons to execute the “Acknowledgment and  
 6 Agreement to Be Bound” that is attached hereto as Exhibit A.

7  
 8 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
 9 PROTECTED MATERIAL

10 When a Producing Party gives notice to Receiving Parties that certain  
 11 inadvertently produced material is subject to a claim of privilege or other protection,  
 12 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
 13 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
 14 may be established in an e-discovery order that provides for production without prior  
 15 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
 16 parties reach an agreement on the effect of disclosure of a communication or  
 17 information covered by the attorney-client privilege or work product protection, the  
 18 parties may incorporate their agreement in the stipulated protective order submitted  
 19 to the court.

20  
 21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
 23 person to seek its modification by the Court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
 25 Protective Order no Party waives any right it otherwise would have to object to  
 26 disclosing or producing any information or item on any ground not addressed in this  
 27 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
 28 ground to use in evidence of any of the material covered by this Protective Order.

1           12.3 Filing Protected Material. A Party that seeks to file under seal any  
2 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
3 only be filed under seal pursuant to a court order authorizing the sealing of the  
4 specific Protected Material at issue. If a Party's request to file Protected Material  
5 under seal is denied by the court, then the Receiving Party may file the information  
6 in the public record unless otherwise instructed by the court.

7  
8       13.    FINAL DISPOSITION

9           After the final disposition of this Action, as defined in paragraph 4, within 60  
10 days of a written request by the Designating Party, each Receiving Party must return  
11 all Protected Material to the Producing Party or destroy such material. As used in  
12 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
13 summaries, and any other format reproducing or capturing any of the Protected  
14 Material. Whether the Protected Material is returned or destroyed, the Receiving  
15 Party must submit a written certification to the Producing Party (and, if not the same  
16 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
17 (by category, where appropriate) all the Protected Material that was returned or  
18 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
19 abstracts, compilations, summaries or any other format reproducing or capturing any  
20 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
21 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
22 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
23 reports, attorney work product, and consultant and expert work product, even if such  
24 materials contain Protected Material. Any such archival copies that contain or  
25 constitute Protected Material remain subject to this Protective Order as set forth in  
26 Section 4 (DURATION).

27  
28       14.    VIOLATION

1 Any violation of this Order may be punished by any and all appropriate measures  
2 including, without limitation, contempt proceedings and/or monetary sanctions.

3  
4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5  
6 Dated: April 26, 2023

**GRUMER LAW, P.A.**

7  
8 By: /s/ Keith T. Grumer

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20 Counsel for Plaintiff Alan Rasof

21  
22 Dated: April 26, 2023

**MUNCK WILSON MANDALA, LLP**

23  
24 By: /s/ Richard de Bodo

25 Richard de Bodo

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Counsel for Defendant Felix Lyubovny



1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

2  
3 DATED: April 28, 2023

*Patricia Donahue*

Patricia Donahue  
United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
 that I have read in its entirety and understand the Stipulated Protective Order that  
 was issued by the United States District Court for the Central District of California  
 on [date] in the case of *Rasof v. Lyubovny*, Case No: 2:22-cv-08080-NS-PD . I  
 agree to comply with and to be bound by all the terms of this Stipulated Protective  
 Order and I understand and acknowledge that failure to so comply could expose me  
 to sanctions and punishment in the nature of contempt. I solemnly promise that I  
 will not disclose in any manner any information or item that is subject to this  
 Stipulated Protective Order to any person or entity except in strict compliance with  
 the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
 the Central District of California for the purpose of enforcing the terms of this  
 Stipulated Protective Order, even if such enforcement proceedings occur after  
 termination of this action. I hereby appoint \_\_\_\_\_ [print or  
 type full name] of \_\_\_\_\_ [print or type full address and telephone number] as  
 my California agent for service of process in connection with this action or any  
 proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_